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MEMBER OF THE BARS
NEW YORK – FLORIDA

June 13, 2008

Hon. James C. Francis
Magistrate
United States District Court
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: **Drayton v. Toys “R” Us, et al**
1:07-cv-06315-RMB-JCF

Dear Judge Francis:

This firm represents the plaintiffs in the above entitled action. This letter is in response to the defendants’ letter dated June 4, 2008, and the subsequent order dated June 10, 2008.

The Plaintiffs have not abandoned this case; in fact, the following plaintiffs have been deposed as scheduled: Patricia Drayton, Valerie Kirk, Angela Stallings, Lai-Quana Utlely, and Ida Jackson. Following the last deposition in this matter, counsel for plaintiffs had several conversations with defendants’ counsel in regard to a Stipulation to withdraw from this matter the names of plaintiffs who failed to appear for scheduled depositions. However, counsels from both parties had several conversations in regard to Mr. Darwin David Rhodes who resides in Cincinnati, Ohio.

I sent several emails to counsels for defendants demanding a date certain to depose Mr. Rhodes. We have tried to decide whether counsels should travel to Ohio or have Mr. Rhodes fly to New York for deposition. In fact, the reason why Mr. Rhodes has not been deposed is because counsel for defendants failed to provide me with date certain for his deposition. Mr. Rhodes has been a very diligent plaintiff and he is prepared and ready to be deposed.

In regard to the other plaintiffs, we have already agreed tentatively that these plaintiffs will be withdrawn from this case. Consequently, I am asking this honorable Court to re-open discovery and to set a date certain for Mr. Rhodes’ depositions either in New York or Ohio, and allow plaintiffs reasonable time to file a Motion for Class Certification. This request is not unreasonable, giving the fact that counsels for the

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Defendants did not inform the court that we have conducted over five (5) depositions, and that we have discussed the deposition of Mr. Rhodes and the Stipulation to withdraw the non-compliant plaintiffs. I believe that had the Court been correctly informed of the progress of this action, the court’s decision might have been very different.

In closing, although I was in Miami on the matters of United States v. Patrick Coulton and United States v. Chanzel McBride when the defendants’ letter came, I fully intended to respond but did not get to do so before the Court’s ruling of June 10, 2008. My co-counsel, Mr. Okoli, who would otherwise have responded to the defendants’ letter, was in the middle of trial preparation for a case in which jury selection was scheduled to begin before Judge Leonard Wexler on June 16, 2008. This is in addition to two complex motions sandwiched in between in Estate of Gupta, (Kings county Surrogate Court), and Sostre v. County of Suffolk, (USDC, EDNY).

We thank the court for its kind consideration.

Respectfully,

Emmanuel Roy
Emmanuel Roy (ER-1756)
Attorney for the Plaintiffs

cc. *Nancy Ledy Guren by facsimile*
Thomas Catalano by facsimile